

IN THE MATTER OF	:	BEFORE THE
ADNAN SONMEZ & GUBER	:	HOWARD COUNTY
SONMEZ, TRUSTEES	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 09-016N

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DECISION AND ORDER

On December 7, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Adnan and Guner Sonmez (the "Petitioners") for confirmation of a nonconforming use of a second detached dwelling unit on a lot located in an R-20 (Residential-Single) Zoning District, filed pursuant to Section 129.D of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified to compliance with the notice, posting and advertising requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Patrick D. Malloy, Esquire, represented the Petitioner. Guner Sonmez testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the TSR, the petition and my site visit, I find as follows:

The subject property is situated on the north side of Route 40, about 400 feet east of the Normandy Drive intersection with US 40 (Baltimore National Pike) and is also

The subject property is situated on the north side of Route 40, about 400 feet east of the Normandy Drive intersection with US 40 (Baltimore National Pike) and is also known as 8356 Baltimore National Pike (the "Property"). The Property is located in the 2nd Election District and is identified on Tax Map 18, Block 19, as Parcel 195. The Petitioners, the Property owners, reside on an adjoining parcel known as 8328 Baltimore National Pike.

The 2.1-acre diamond-shaped Property is accessed from a driveway located in the southwestern section or on the adjoining property. This driveway curves north and eastwardly toward a large parking area situated between two structures. According to Petitioners' photographic Exhibit 1, one of these structures is a small, two-story detached dwelling ("Unit A"), next to which is a covered brick patio. A fenced swimming pool is situated in the rear yard about 25 feet from the west property line. The Property itself is mostly lawn dotted by many tall deciduous trees.

Across the parking area to the north is a two-story structure, the subject of this petition ("Unit B"). As depicted in Petitioners' Exhibit 1, Unit B is a two-car garage with a dwelling unit and balcony on the second floor. The garage is 49.5 feet long and 20.5 feet deep. The apartment is 42 feet long and 20 feet deep. The photographs indicate the detached garage has a separate electric meter. According to the Technical Staff Report ("TSR"), the petition included nine documents (Documents 1-9).

D1. Assessment card from Maryland Department of Assessments and Taxation

D2. Residential worksheet — Reassessment Year 2007 Maryland Department of Assessments and Taxation dated November 18, 2008

D3. Aerial view of Property

D4. Sketch view of Property

D5. Assessment record for 8328 Baltimore National Pike; Petitioners are owners of adjacent property

D6. Letter from Petitioner, Mrs. Guner Sonmez to Curtis Braithwaite, Howard County Department of Planning and Zoning

D7. Lease Agreement dated April 1, 1996 for subject property. Tenant is Wesley Green

D8. Letter dated April 29, 2004 from Petitioner to Tenants, Daryl T. Trump and Pateisha Redhen

D9. Lease Agreement Addendum dated August 7, 2004. Tenant is Jim Roche

In an April 6, 2009, letter to Patrick Malloy, Esquire, Department of Planning and Zoning ("DPZ") Planning Specialist Zan Koldewey, informed Mr. Malloy of the need for additional information proving the apartment remained in continuous use from October 1977 to the present before DPZ could accept the petition and schedule a hearing. The letter also requests copies of all rental licenses, citing Section 129.A of the Zoning Regulations, which provides that a nonconforming use is any *lawful* existing use (emphasis added). On September 10, 2009 Mr. Malloy submitted five additional documents (Documents 10-14)

D10. Affidavit of Guner Sonmez dated July 29, 2009

D11. Water and Sewer Billing System Consumption History print out for 2007 through 2009

D12. BGE bill dated April 2, 2009 for R8356 Baltimore National Pike, a separate bill from the larger residence known as 8356 Baltimore National Pike

D13. Deed from Royden H. Wood, Jr., and Lillian P. Wood, his wife, and Richard B. B. Wood to William A. King and Evelyn D. King dated October 23, 1958

D14. Deed from David Diener, personal representative of the estate of William A. King to Adnan Sonmez and Guner Sonmez dated October 1995

Vicinal properties. Adjacent parcels on the north side of US where the Property is located are generally zoned R-20 and are improved with single-family attached dwellings. Across US 40 to the south is the R-A-15 zoned Parcel 213, which is improved with an apartment development.

Roads. US 40 has two westbound travel lanes and wide shoulders along the Property frontage within a 150-foot right-of-way. The posted speed limit is 45 MPH.

Water and Sewer. The Property lies within the Metropolitan District and the Existing and Under Construction Service Area of the Howard County Water and Sewerage Master Plan. The Property is served by private well and septic. The Howard County Health Department comments state the department does not object to the non-conforming use petition subject to the condition that the Property be connected to public sewer utilities and that the existing well and septic system be properly abandoned and sealed.

General Plan. The Property is designated "Residential" on the 2000-2020 Policies Map of the 2000 General Plan. US 40 is depicted as an Intermediate Arterial on the General Plan's Transportation Map.

Zoning History. DPZ issued the Petitioners a zoning violation notice on November 28, 2008 for more than one single-family dwelling on R-20 zoned property (CE 08-177).

The Petition. The Petitioner requests confirmation of a nonconforming use for a second dwelling unit on a single lot (Unit B). Unit B is an apartment on the second floor of the detached garage on the Property.

In response to questioning, Mrs. Sonmez testified that she was unaware of Howard County's rental license requirement.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

Section 129.A of the Zoning Regulations defines a nonconforming use as "any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, on the effective date of those regulations or because of any subsequent amendment thereto." Because the Petitioners are the subject of a zoning violation notice alleging the illegal use of the property for a second dwelling (***), the Petitioners apparently offered as a defense the fact that the alleged illegal use is nonconforming and submitted a nonconformance confirmation petition to the Hearing Examiner in accordance with Section 129.D.2.

Pursuant to Section 129.D.1, the petition must include:

- a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.**
- b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.**
- c. Documentation substantiating the existence of the use on the date it became nonconforming and clearly demonstrating the continued and**

uninterrupted use or operation thereof from the specified date to the time of filing the application. The burden shall be on the property owner to establish the existence of the nonconforming use.

Compliance with Section 129.D.1.a. In this case, the petition describes the magnitude and extent of the alleged nonconforming thus: "An apartment exists above the garage. The garage is detached from the principal dwelling on the lot ... The second apartment unit was conforming when it was built in 1960." Document D1 notes the apartment above the garage is 840-square feet in size (20' X 42') with a second-story porch.

Compliance with Section 129.D.2.b. The petition identifies the date the subject use became nonconforming to the use provisions of the Zoning Regulations as October 3, 1977, when the R-20 Zoning Regulations were changed to allow one single family dwelling per lot. DPZ agrees with this date.

Compliance with Section 129.D.3. The determinative issue in this case with whether the Petitioners have met their burden of submitting sufficient documentation to substantiate the continued uninterrupted use of the apartment on the date the use became nonconforming, October 3, 1977 zoning change and that the use has continued uninterrupted since that date. In this case, use means occupancy of the rental apartment. For the reasons discussed below, I conclude the Petitioners have not proven by a preponderance of the evidence the continued uninterrupted lawful occupancy of the apartment since October 3, 1977, and I am therefore denying their petition for confirmation of a nonconforming use for a second dwelling on a single lot in an R-20 zoning district.

The Petitioners' Documentation

A. Documents submitted prior to the hearing

D1. Assessment card from Maryland Department of Assessments and Taxation. This document indicates the principal dwelling was built about 1945 and that a second 840-square foot structure was built around 1960. An annotation on the worksheet notes the presence of a "Garage/Apt over" the second floor of the 840-square foot garage. This information establishes the only the physical presence of the apartment, not that the use was lawful in October 1977.

D2. Residential worksheet — Reassessment Year 2007 Maryland Department of Assessments and Taxation dated November 18, 2008. This document indicates the existence of an 840-square foot second dwelling on the Property in 200. It does not establish occupancy on a continuous basis.

D3. Aerial view of Property. The aerial depicts the garage, but the vantage point does not plainly depict the presence of the apartment.

D4. Sketch view of Property. The document simply depicts the location of the garage. It does not establish occupancy on a continuous basis.

D5. Assessment record for 8328 Baltimore National Pike; Petitioners are owners of adjacent property. The document does not establish occupancy on a continuous basis.

D6. Letter from Petitioner, Mrs. Guner Sonmez to Curtis Braithwaite, Howard County Department of Planning and Zoning. The letter requests more time to provide

supporting documentation. It also states the Petitioners purchased the home in 1996. It does not establish occupancy on a continuous basis.

D7. Lease Agreement dated April 1, 1996 for subject property. Tenant is Wesley Green. The letter establishes the start date of a month-to-month residential lease between Lessor Adnan M. Sonmez, M.D., and Lessee Wesley Green for with a monthly rent of \$400.00. Condition 13 permits either party to terminate the lease by one month's notice. Because there is no documentation supporting the length of the tenancy such as canceled checks, the length of Mr. Green tenancy is not known.

D8. Letter dated April 29, 2004 from Petitioner to Tenants, Daryl T. Trump and Pateisha Redhen. The letter from Mrs. Sonmez informs the tenants that their lease will not be extended when the one-year lease agreement for 8356 Baltimore National Pike expires on July 31, 2004.

D 9. Lease Agreement Addendum dated August 7, 2004. Tenant is Jim Roche. The document is an addendum with a lease date starting August 7, 2004 and ending June 30, 2004. Based on what appears to be an inaccurate tenancy period, I am unable to determine the start and end date of the tenancy absent additional supporting documentation.

D10. Affidavit of Guner Sonmez dated July 29, 2009. The affidavit states the Petitioners purchased the subject property from William King on October 19, 1995, that Mr. King has told Mrs. Sonmez this daughter once lived in the apartment and that he rented the unit after she moved out. It also states the apartment "was always rented or available for rent except for a period when Mr. King's daughter lived in the apartment."

D11. Water and Sewer Billing System Consumption History print out for 2007 through 2009. This document indicates the existence of a separate meter for the Apartment. It does not establish continuous occupancy.

D12. BGE bill dated April 2, 2009 for R8356 Baltimore National Pike, a separate bill from the larger residence known as 8356 Baltimore National Pike. The bill does not establish continuous occupancy.

D13. Deed from Royden H. Wood, Jr., and Lillian P. Wood, his wife, and Richard B. B. Wood to William A. King and Evelyn D. King dated October 23, 1958. The deed does not address the tenancy or occupancy of the second dwelling unit.

D14. Deed from David Diener, personal representative of the estate of William A. King to Adnan Sonmez and Guner Sonmez dated October, 1995. The deed establishes the start date of the term for which the Petitioners should have documentation establishing the continuing occupancy of the second dwelling unit.

B. Petitioners' Exhibit 2 (Introduced Into Evidence During the Hearing)

During the hearing, the Petitioners introduced into evidence a list of tenants. The tenants and dates of occupancy are:

1. Wesley Green. April 1, 1996 to April 1, 2001
2. Christy Silbough Warren. July 22, 2001 to June 31, 2004
3. Daryl Trump and Pateisha Redhen. July 1, 2002 to July 31, 2004
4. James Roche. August 7, 2004 to October 8, 2008

I am unpersuaded by this list. The Petitioners have not met their burden of documenting these tenancies as continuous through leases establishing the alleged occupancy start and ending dates, rent receipts or canceled checks.

C. Documents Submitted After the Hearing

During the hearing, I informed the Petitioners that the documentation and exhibits were not persuasive on the issue of continuous occupancy for the requisite period, from 1996 to the present. I denied their request to continue the hearing in order to permit them track down additional documentation or to allow the record to be held open to allow additional evidence to be submitted, concluding the six-month period between the petition's submission and the date of the second round of submitted documents provided them sufficient time to locate the necessary supporting documentation. Nonetheless, on December 9, 2009, I received by mail copies of the Petitioners' tax records for the years 2001 through 2008 through their attorney Patrick Malloy. His December 8, 2009 letter to me states the 1041 and Schedule E forms refer to the rental property at 8356 Baltimore National Pike.

Pursuant to Rule 10.1 of the Hearing Examiner Rules of Procedure, I may consider only the evidence in the record when making a decision. Because the Petitioners' tax records were submitted after the record was closed, I am not permitted to consider them. Assuming arguendo the tax records were properly in evidence, this documentation demonstrates, for the most part, the opposite of what they are intended to demonstrate, continuous occupancy since October 1995.

Handwritten notes for their 2001 return, for example, indicate the apartment was rented for five months that year for \$750.00. This contradicts Petitioners' Exhibit 1, which alleges continuous occupancy by tenant Wesley Green from April 1, 1996, to April 1, 2001. Based on the notes for Petitioners' 2005 return, the apartment appears to have been continuously occupied for rented for 12 months, as the notes indicated \$10,200 in rental income (12 months at \$850.00). Occupancy dates for the other years cannot be inferred as the Schedule E forms do not separately list the two rental units on the Property, they being identified simply as the "residential rental house" at 8356 Ellicott City.

Conclusion

The Zoning Regulations place the burden on the property owner to establish the lawful existence of the alleged nonconforming use through documentation substantiating the existence of the use on the date it became nonconforming and by clearly demonstrating the continued and uninterrupted lawful use or operation thereof from the specified date to the time of filing the application. The record of this case clearly demonstrates the Petitioners have not met their burden.

Read in its most favorable light, the Petitioners' documentation substantiates the existence of the detached garage structure in or about 1960. The use of the apartment, through documentation establishing occupancy can be demonstrated for a period of uncertain duration beginning in 1996, from July 31, 2003 to July 31, 2004, and from September 2007 through March 2009.

The Petitioners' have not substantiated the existence of the use (occupancy of the apartment) on the date it became nonconforming, October 3, 1977. Nor have they documented the continued and uninterrupted use or operation of the use from this date to the date they filed their petition. For these reasons, I am compelled to deny their petition.

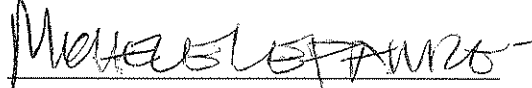
ORDER

Based upon the foregoing, it is this **5th day of January 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Adnan and Guner Sonmez to confirm a nonconforming use for a second dwelling unit on a single lot in an R-20 (Residential: Single Family) Zoning District is **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.